Supreme Court, U.S.
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No. 08-1472

In the Supreme Court of the United States

USA MOBILITY WIRELESS, INC.,
PETITIONER,

v.

JERILYN QUON, APRIL FLORIO, JEFF QUON,
STEVE TRUJILLO,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR REHEARING

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Pursuant to Rule 44.2, petitioner USA Mobility Wireless, Inc. ("USA Mobility") respectfully petitions for rehearing of this Court's December 14, 2009 Order denying certiorari in this case. Petitions for rehearing of an order denying certiorari are generally granted if a petitioner can demonstrate "intervening circumstances of a substantial or controlling effect" or if a petitioner raises "other substantial grounds not previously presented." Rule 44.2.

On the same day this Court denied USA Mobility's conditional cross-petition, it granted a separate petition filed by the City of Ontario in this case, raising Fourth Amendment issues. *See City of Ontario et al. v. Quon et al.*, No. 08-1332. In considering whether plaintiffs had a reasonable expectation of privacy in their pager messages, this Court may analyze whether the Stored Communications Act required USA Mobility to obtain plaintiffs' consent before releasing those messages to the City—and may conclude that the Ninth Circuit erred by holding USA Mobility liable under the Act.

To forestall any suggestion by plaintiffs that USA Mobility would be unable to benefit from such a ruling by this Court, and to prevent unnecessary litigation over the issue, USA Mobility respectfully requests that this Court hold this petition for rehearing until it issues an opinion in *Quon*. If it is appropriate in light of the issues this Court chooses to address in *Quon*, this Court should then grant USA Mobility's petitions for rehearing and certiorari and reverse or remand the Ninth Circuit's judgment as to USA Mobility.

CONCLUSION

The petition for rehearing should be held pending the outcome in *City of Ontario et al. v. Quon et al.*, No. 08-1332, and then granted.

Respectfully submitted,

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CERTIFICATION OF COUNSEL

As counsel for cross-petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

DATED: January 7, 2010.



J. Scott Ballenger